

## **PROCEEDINGS OF THE BROWN COUNTY EXECUTIVE COMMITTEE**

Pursuant to Section 18.94 Wis. Stats., a regular meeting of the **Brown County Executive Committee** was held on Monday, August 6, 2012 in Room 200 of the Northern Building – 305 East Walnut Street, Green Bay, Wisconsin

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**Present:** Chair Tom Lund, Supervisors Patrick Moynihan, Jr., Pat Buckley, Bernie Erickson, Pat Evans, Steve Fewell, Pat Wetzel

**Also Present:** Brent Miller, Juliana Ruenzel, Supervisor Williams, Supervisor Carpenter, Fred Mohr, Supervisor Robinson, Dan Process, David Hjalquist, Lynn Stainbrook, Troy Streckenbach, Supervisor Sieber, Supervisor Hoyer, Supervisor Vander Leest, Dr. Watermolen, other interested parties

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**I. Call Meeting to Order:**

The meeting was called to order by Chairman Tom Lund at 5:30 p.m.

**II. Approve/Modify Agenda:**

**Motion made by Supervisor Moynihan, seconded by Supervisor Erickson to approve.**

**Vote taken. MOTION UNANIMOUSLY APPROVED.**

**III. Approve/modify minutes of July 9, 2012.**

**Motion made by Supervisor Moynihan, seconded by Supervisor Buckley to approve.**

**Vote taken. MOTION UNANIMOUSLY APPROVED.**

### **Communications**

1. **Communication from Supervisor Zima re: Refer to Corporation Counsel to seek an opinion from the Attorney General's office regarding whether or not Brown County Supervisors have a right to apply for and have health and dental benefits in accordance with policy set at the County Board Annual Meeting in November 2011. (Communication to coincide with Supervisor Haefs June 11, 2012 Communication – see attached). *Referred from June County Board.***

Supervisor Erickson stated it was his understanding the County Board already passed this item and Supervisor Buckley indicated that the Corporation Counsel's office had been asked to respond before taking that action.

Corporation Counsel Ruenzel asked for clarification on what her opinion should include pointing out that funding will need to be approved by a 2/3rds vote of the County Board due to insurance appropriation. To get this vote may be difficult due to the County Executive's veto, Ruenzel explained. She indicated, however, that the Board does have the opportunity to reconsider the veto and recommends they do so. Whether the County Board can set a future contribution will depend on whether or not salary is included in compensation. Ruenzel noted that the County Board works under statute which is different from the Attorney General's opinion that compensation includes fringe benefits. Her reading of the statute is that the legislature wants compensation to include annual salary but not benefits and because the Board took action to approve compensation, then came back with a separate action regarding benefits means that they cannot be combined. Failure to get approval could mean an unfunded benefit.

*(Supervisor Fewell arrived at 5:37 p.m. and Supervisor Wetzel arrived at 5:38 p.m.)*

Supervisor Buckley asked why the Board is wasting Attorney General's office time with this, stating it should be taken care of in-house. Because of that, Buckley indicated he will not vote to send the matter to the Attorney General's office.

Supervisor Robinson indicated that he if understands the Corporation Counsel's statement, this is not considered salary so the present Board can make a decision about the benefits. He indicated he is in favor of sending to the Attorney General only because he feels the matter will not move forward until that is done.

Supervisor Fewell pointed out that the County does not have to follow the Attorney General's opinion, however, Corporation Counsel stated that although that is correct, an opinion would be persuasive in a court of law.

Further discussion resulted in Supervisors Moynihan, Erickson, and Fewell stating they would like to move forward with an opinion and get the matter settled. Ruenzel indicated there is nothing in State Statute which says that the County has to pay for supervisor benefits, again pointing out that the Attorney General will not say benefits have to be funded, that it is a County Board decision which will require a majority vote.

**Motion made by Supervisor Moynihan, seconded by Supervisor Erickson to forward letter to Attorney General's office for opinion. Vote taken.**

**Ayes: 5 (Fewell, Wetzel, Moynihan, Lund, Erickson)**

**Nay: 1 (Buckley)**

**MOTION CARRIED**

2. **Communication from Supervisor Robinson re: Request that the County Board (1) hold a special visioning session or series of visioning sessions and (2) consider putting together a Master Plan to guide the work of County Government. Held for one month.**

Supervisor Robinson provided a handout showing charts which address examples of what could be done with visioning or strategic planning. Options were highlighted, along with goals to be achieved, responsibility for implementation, along with cost (see attached). Steps include the following:

- Hold a one time visioning session.
- Compile current long-term plans
- Have the County Executive and staff do overall long-term strategic planning, bring results to the County Board.
- Conduct a strategic planning process for the Board including staff and citizen input
- Create a County Board task force that would present concrete options to the Executive Committee and Board.

Robinson indicated his plan provides several options which will help to determine where the County is going over the next five years, opining that the CIP plan does not account for programming costs, and that this plan could help the Board make better decisions with budget.

Supervisor Buckley suggested that Supervisor Robinson and the County Executive meet to discuss this plan.

**Motion made by Supervisor Buckley, seconded by Supervisor Wetzel to refer to Supervisor Robinson and the County Executive to put together a strategic plan. No vote taken.**

Supervisor Wetzel, although in favor of the motion to move forward with strategic planning, questioned how much of this work has already been done. He stated he would like to think a lot of departments work together and do long term planning already. He indicated that budgets are not getting any easier and that this may be a good place to start to review current plans that are already in place.

Supervisor Moynihan stated he was in favor of Robinson's plan and timing, noting that work has already begun on the 2013 budget.

*(Supervisor Fewell was excused at 5:55 p.m.)*

Supervisor VanderLeest expressed a concern that visioning may become a wish list for more programs and services. He asked for clarification of the goals and how they will benefit constituents and taxpayers. He asked that planning be kept in context, suggesting that guidelines be set before starting and that planning be completed within 3 – 6 months with a report to the committee on the findings.

Supervisor Robinson indicated that his plan is to first discuss with the County Executive and Board Chairman to determine what plans already exist. His goal is to have the first session before budget time.

County Executive Streckenbach stated that although he thinks the project is important, questions the timing asking that it be put off during the budget planning period. He will be meeting with department heads within the next two weeks, with final adjustments made in September for presentation in October. While he agrees with the request, the time frame is not acceptable. Streckenbach stated that he would hope that committee directors are already communicating short-term and long-term plans.

Supervisor Buckley disagreed with this approach, feeling it may be important to begin discussions now, while Supervisor Wetzel opined that the budget process should take priority over a vision session, although would like to see it occur in the future.

*(Supervisor Evans arrived at 6:07 p.m.)*

Supervisor Robinson agreed to move forward with dialogue around January 1<sup>st</sup> in preparation for the 2014 budget year. His goal is to ask for public comment and input. Supervisor VanderLeest agreed it is important to include the public for their comments and input on current programs, i.e. what they would like to see stay and what could be cut.

Although agreeing with this plan, Supervisor Erickson stated that he attempts to attend committee budget meetings and encouraged others to do the same, indicating they may find that long term strategic planning already exists on a department level.

**Motion by substitution made by Supervisor Erickson, seconded by Supervisor Lund to move forward with strategic plan, but not until January, 2013. Vote taken.**

**MOTION UNANIMOUSLY APPROVED**

3. **Communication from Supervisor Sieber re: To have Human Resources include their rationale for the salary assigned to any new department head in the packet which the County Board receives prior to confirmation vote. *Referred to August to have staff provide.***

In response to the communication from Supervisor Sieber, Department of Administration Director, Brent Miller, presented a handout explaining the matrix that is used to rate positions and determine salaries. This matrix, he explained, is complex and based on requirements, responsibilities, and impact on decisions. A point system is reviewed by an analyst and again by the HR Director with comparisons compared and rated. Miller explained that this system is used by many counties and private companies.

**Motion made by Supervisor Erickson, seconded by Supervisor Moynihan to receive and place on file. Vote taken. MOTION UNANIMOUSLY APPROVED.**

4. **Communication from Supervisor Fewell re: To reduce all fees for Senior Citizens that Brown County charges by 33% including golf course, zoo, museum, Frisbee golf, rental fees, Register of Deeds, Medical Examiner fees, all County Clerk fees, including boat launch fees to honor all Senior Citizens in Brown County. *Referred from July County Board.***

**Motion made by Supervisor Moynihan, seconded by Supervisor Wetzel to hold. Vote taken. MOTION UNANIMOUSLY APPROVED.**

5. **Communication from Supervisor Vander Leest re: Request to investigate hiring on-call or part-time employees for 24-7 employees in Brown County. *Referred from July County Board.***

Supervisor VanderLeest addressed his request to investigate the hiring of on-call or part-time employees for 24-7 employees, explaining that he has worked for Kimberly Clark for six years, stating that they utilize personnel on weekends and holidays beginning on Friday afternoon for a total of 25 hours. They are hired for this time and get straight pay to avoid overtime, finding it is a cost savings. He brought the matter forward to Attorney Mohr who felt it was an idea to pursue. When asked by Supervisor Lund if he has discussed this idea with Karl Fleury of the 911 Communications Center, VanderLeest responded he wanted to bring it before committee first.

Supervisor Erickson indicated agreement with this idea, noting there are retired law enforcement people, etc. who may be interested, as did Supervisor Wetzel who pointed out there may be other hours that need filling other than weekends.

When asked for his opinion, Attorney Mohr indicated that administration has held meetings with the principals involved and are looking into part-time positions in order to solve the existing problem.

Supervisor Buckley and Wetzel pointed out that training is an issue, suggesting that alternatives for job sharing be explored with the private sector, i.e. hospital staff, noting there are answers, however, the County must be able to deviate from what has been done the last 10 to 20 years.

Supervisor Evans stated that the idea is interesting, although suggests further investigation in order to hire appropriate staff. Brent Miller reported that recent discussions have resulted in a recommendation to explore job share. Supervisor Buckley agreed, although encouraged that limitation to a standard work week not be part of the plan.

Supervisor Erickson recommended the item be referred to staff, suggesting that scheduling be done within the county's established work week, Sunday through Saturday.

Although in agreement, Supervisor Wetzel and others questioned the limitation to the established work week considering those departments that are 24/7.

**Motion made by Supervisor Erickson, seconded by Supervisor Evans to send Supervisor VanderLeest's suggestion to investigate hiring on-call or part-time employees for 24-7 hours in Brown County to staff to continue to review creative scheduling within the County's established work week of Sunday through Saturday. Vote taken. MOTION UNANIMOUSLY APPROVED**

6. **Communication from Supervisor Vander Leest, Van Dyck, and Steffen re: Request to the Brown County Executive to prepare a budget for 2013 that freezes or lowers property taxes for Brown County taxpayers. *Referred from July County Board.***

Supervisor VanderLeest, VanDyck, and Steffen brought forward this communication which is a request to the County Executive to prepare a 2013 budget that freezes or lowers property taxes in Brown County due to the increase in foreclosures in the County. VanderLeest explained that residents are having to find higher paying jobs or part-time jobs to cover their bills and property taxes. He asked that his opinion be put on record that taxes are high enough.

When asked by Supervisor Wetzel the opinion of Executive Streckenbach, he commented that he agrees with this challenge and encourages dialogue and communication with any of the supervisors.

**Motion made by Supervisor Moynihan, seconded by Supervisor Buckley to forward to Corporation Counsel to draft a resolution with regard to the request by Supervisor VanderLeest that the County Executive prepare a 2013 budget that freezes or lowers property taxes for Brown County taxpayers and bring to the next Executive Committee meeting. Vote taken. MOTION UNANIMOUSLY APPROVED.**

#### **Legal Bills**

7. **Review and Possible Action on Legal Bills to be paid.**

**Motion made by Supervisor Moynihan, seconded by Supervisor Erickson to pay the legal bills. Vote taken. MOTION UNANIMOUSLY APPROVED.**

Supervisor Buckley asked for further explanation of the Attorney Michael Best invoices. Chairman Lund and Attorney Mohr explained the process and breakdown that is used, explaining that these invoices are related to water clean-up and the ceiling which has been placed on the project. Invoices are first reviewed by Corporation Counsel. Supervisor Erickson further added that this is a budgeted item.

#### **Reports**

8. **County Executive Report.**

a) No report, no action.

9. **Labor Attorney Report.**

a) **Telecommunicator / Correction Officer Discussion.**

**Motion made by Supervisor Moynihan, seconded by Supervisor Erickson to suspend the rules and take Items 9a and 16 together. Vote taken. MOTION UNANIMOUSLY APPROVED**

Attorney Mohr reported that since the last Executive Committee meeting two meetings have been held with interested parties, i.e. telecommunicators, corrections officers, department heads,

Executive Streckenbach, Brent Miller, and Lynn Vanden Langenberg. Mohr indicated that discussions, along with data from other counties, has been used to identify the various problems and determine a solution which is included in the attached resolution. Mohr explained that over the last 30 years labor law has been fine-tuned and comparables have been established between Brown County and Outagamie, Winnebago, Fond du Lac, Sheboygan, and Manitowoc Counties based on proximity and population. Handouts were provided related to actions in other counties, along with information specific to telecommunicators. Mohr explained that because many times paid health insurance premiums are not paid out, there are dollars available for overtime.

Mohr explained that the resolution will give the County Executive authority over a one year period to consider job sharing for employees and remain flexible with workers in order to retain them and still provide coverage. In addition, Mohr addressed training which would make employees more confident. This resolution will give the Executive the flexibility to determine and fine tune when inverting premiums and the most prudent way to do it.

Supervisor Wetzel noted this is good information, asking about overtime. Mohr responded that during this one year period, overtime numbers will be reviewed, along with vacation and sick time.

Supervisor Buckley indicated he would like to see the information provided by Attorney Mohr used as a first step to solving issues, asking for a further report in the next month.

**Motion made by Supervisor Erickson, seconded by Supervisor Wetzel to receive and place on file Item 9a . Vote taken. MOTION UNANIMOUSLY APPROVED**

**Vacant Budgeted Positions (Request to Fill)**

**10. Child Support – Child Support Specialist – Paternity – vacated 6/15/12**

Supervisor Erickson asked the County Executive if it was appropriate to continue to fill positions when trying to save money and freeze budgets. The Executive responded that many times there is not a choice as many positions are attached to funding and are mandated services.

**Motion made by Supervisor Moynihan, seconded by Supervisor Evans to suspend the rules and take Items 10 - 13 together. Vote taken. MOTION APPROVED UNANIMOUSLY**

**Motion made by Supervisor Moynihan, seconded by Supervisor Evans to approve Items 10 – 13. Vote taken. MOTION APPROVED UNANIMOUSLY**

**11. Human Services – AODA Counselor II – vacated 6/28/12**

*See action at Number 10 above.*

**12. Human Services/CTC – Clerk II – vacated 7/20/12**

*See action at Number 10 above.*

**13. Human Services/CTC – Medical Transcriptionist – vacated 8/3/12**

*See action at Number 10 above.*

**Resolutions, Ordinances**

**14. Initial Resolution Authorizing the Issuance of Not to Exceed \$3,900,000 General Obligation Airport Refunding Bonds of Brown County, Wisconsin.**

**Motion made by Supervisor Erickson, seconded by Supervisor Moynihan to approve. Vote taken. MOTION UNANIMOUSLY APPROVED.**

15. **Initial Resolution Authorizing the Issuance of Not to Exceed \$3,365,000 General Obligation Refunding Bonds of Brown County, Wisconsin.**  
**Motion made by Supervisor Moynihan, seconded by Supervisor Evans to approve. Vote taken. MOTION UNANIMOUSLY APPROVED.**

16. **Resolution Granting Authority to pay Additional Compensation to Brown County Employees.**  
See discussion in #9a  
  
**Motion made by Supervisor Moynihan, seconded by Supervisor Erickson to approve. Vote taken. MOTION UNANIMOUSLY APPROVED**

17. **Resolution Adopting Brown County's 2013 five-Year Capital Improvement Plan.**  
  
**Motion made by Supervisor Moynihan, seconded by Supervisor Wetzel to approve. Vote taken. MOTION UNANIMOUSLY APPROVED.**

18. **Resolution Recognizing Library Board Autonomy.**  
When Chairman Lund asked the advantage of Library Board autonomy, Executive Streckenbach indicated there are many advantages which come under the law. In order to meet budget requirements and Table of Organization changes, Streckenbach stated that autonomy will provide the ability to monitor and administer the library budget and staff.

Attorney Mohr pointed out that this issue has been discussed over the last 4-5 years, quoting State Statue 43.58(4), which states: "The Library Board shall supervise the administration of the public library and shall appoint a librarian who shall appoint such other assistants and employees as the Library Board deems necessary and prescribe their duties and compensation." Mohr pointed out that statute quite clearly says it is the Library Board who employees work for and Library Board who will determine compensation.

Questions regarding liability to the County if Library employees are not County employees were addressed by Director Stainbrook who noted that when bargaining issues changed, it seemed appropriate to make changes. Hiring of new employees would fall to the Library Board and they would be required to hire all existing employees.

Supervisor Wetzel noted that the proposed resolution states that the Library Board will assume all fiscal responsibility, pay for accrued benefits, etc, asking for a dollar figure and if the County would then be relieved of this responsibility. Stainbrook responded that the figure at this time is \$157,870 and would only increase through pay increases. Mohr added that the number is diminishing because of converted casual days.

Director Stainbrook indicated that meetings are held regularly and fiscal problems and staffing are understood. In addition, there is a grievance policy and policies are up to date. She requested that the resolution granting autonomy be backdated to January 2012 due to vacation benefits and union contracts, although Attorney Mohr indicated there is no need to do this.

A communication from the State of Wisconsin, Department of Public Instruction is attached. Elizabeth Burmaster, State Superintendent, states that a county is authorized to establish a consolidate county library according to the terms of s. 43.57 Wis. Stats. Brown County has exercised this authority in the Brown Code of Ordinances. She states that in her opinion, the Library Board and the Library Director, rather than the County Board and the County Executive possess the statutory authority to perform each of the listed functions". Those functions include: hire and fire library staff,

determine the compensation and duties of library staff, hire the library director, determine the compensation of the director, conduct or participate in the negotiation of labor agreements, make budget transfers, carry forward unexpended funds, and close library branches.

Supervisor Buckley asked for clarification of liability to the County and Director Stainbrook explained there are policies in place that would cover this.

Supervisor Evans asked for time to review the information, that he would not vote for approval at this time.

**Motion made by Supervisor Moynihan, seconded by Supervisor Erickson to approve.**

**Vote taken. Ayes – 5 (Wetzel, Buckley, Moynihan, Lund, Erickson)**

**Nay – 1 (Evans)**

**MOTION CARRIED 5-1**

**Other**

**19. Such other matters as authorized by law.**

Pat Moynihan introduced new Internal Auditor, Dan Process.

Moynihan indicated that the budget meeting will be held on November 5 and continue to November 7 in the evening if necessary.

**Motion made by Supervisor Moynihan, seconded by Supervisor Evans to adjourn at 7:31 p.m.**

**Vote taken. MOTION UNANIMOUSLY APPROVED.**

Respectfully submitted,

Therese Giannunzio  
Recording Secretary

Rae G. Knippel  
Transcriptionist



# Some beginning options for visioning/strategic planning

<b>OPTION</b>	<b>GOAL</b>	<b>WHO</b>	<b>COST</b>
Hold a one-time visioning session (2-8 hours) in the next couple of months	Set priorities for the coming budget cycle	<ul style="list-style-type: none"> <li>External facilitators (WCA Staff, UW Extension)</li> <li>Brown Co. Planning Dept.</li> </ul>	<ul style="list-style-type: none"> <li>Travel expenses, most likely</li> <li>Staff time</li> </ul>
Compile current long-term plans (e.g., 5-year capital expenses plan, Solid Waste plan, etc.)	See these together and considering where they are common, where there are gaps, and what their impact together might be	County staff report to Executive Comm. (could include Supervisor participation as well)	Staff time
Have County Executive and staff to do some overall long-term strategic planning and bring those results to the County Board	Begin strategic planning process with the people who are most involved with day-to-day operations	County Executive and staff	Staff time
Conduct a strategic planning process for the board that would include staff and citizen input (3-12 months)	Comprehensive strategic plan for county operations that would create investment in it by the wider community	<ul style="list-style-type: none"> <li>External facilitators (WCA Staff, UW Extension)</li> <li>Brown Co. Planning Dept.</li> </ul>	<ul style="list-style-type: none"> <li>Travel expenses, most likely</li> <li>Staff time</li> </ul>
Create a County Board task force that would present concrete options to the Executive Committee and full County Board (by a specific deadline) for consideration and adoption	Keep process moving while giving Supervisors input on the plan and not committing right now to anything specific	County Supervisors (with possible assistance from staff)	None (with possibly some staff time)

*More options are possible, and those presented here are not mutually exclusive. More than one could be adopted at the same time.*

## Point Factoring Training Guidelines: For HR Analysts

Subject: Point factoring a position

Procedure:

1. Ensure you have the current Job Description (JD).

- If not current, ensure it is reviewed by the owning supervisor.
- Take this time to have the supervisor fill out the "Position Evaluation" worksheet.
- Find out where the Manager wants the position to fall in the hierarchy of their department (subjective).
- You may need to inform the supervisor/manager this is not possible or coach them with suggestions that change the JD and thus alter the point factoring.
- Have the responsible Analyst review the changes if any and ensure JD is standardized.

2. Find a current **JD and its point factoring sheet** that closely compares to the position you are about to point factor. Suggest looking at Comp and Class Sheet to find equal pay positions and/or duties. Sometime using a subordinate or superiors JD (one below or above) will help.

3. Analyze both side-by-side. This is to get a good frame of reference. **I would suggest that once you start this, you avoid any interruptions until finished.**

4. Pull up a blank Point Factoring Sheet (Excel or printed) and begin rating the areas of:

- Span
- Time
- Budget

Note: the spreadsheet will automatically calculate as you fill in ratings

5. Next, rate the 3 work requirement weights:

- Data Utilization
- Human Interaction
- Eq/Machines and Mats Utilization

Note: Refer to the long rating guide for terms associated with the different degrees/weights/levels.

6. Next, determine each of the Aptitude Requirements. Be sure to compare with the sample or point factor you used to get you frame of reference.

Note: Experience and Education requirements come directly from the JD as is.

7. If you are using the excel spreadsheet, you can already see the grade this has point factored out to—if not, you need to transcribe the numbers to the automated sheet.
8. Before this become official—Another HR Analyst which includes the Employee Relations Manager, must review the point factor.
9. Notify the department manager of the results and both of you must agree before it becomes a recommendation to the Director of HR. Once the Director approves, it becomes official.
10. Save the point factoring spreadsheet along with dates, responsible analyst and who reviewed it for history files.
11. Other actions?

Notes:

1. Understand the difference in overall point changes when you change just one number in the areas of

Span/Time/Budget

Vs

Data Utilization/Hum Interaction/Equ/Machines etc.

Vs

Individual Aptitude Requirements i.e. Verbal Math, Functional, Situational etc...

2. Review the long Rating Guide
3. What is a Comprehensive Position Questionnaire (CPQ) Checklist? Can we get by using the Position Evaluation?
4. No point factoring “Numbers” are to be shared outside the HR dept.

## JOB EVALUATION CALCULATIONS

TITLE:		CODE:		
DEPARTMENT:		GRADE:	#N/A	
LOCATION:		FLSA:		
DATE:		ANALYST:		

Please fill the yellow areas only!

WORK REQUIREMENTS		APTITUDE REQUIREMENTS - DEGREE OF DEVELOPMENT										JOB EVAL POINTS
SET	DEGREE WEIGHT	1 Verbal	2 Math	3 Function	4 Situation	5 Dexterity	6 Physical	7 Sensory	8 Experience	9 Education	10 Environment	
A	0	0	0	0	0	0	0	0	0	0	0	0
DATA UTILIZATION		0	0	0	0	0	0	0	0	0	0	0
B	0	0	0	0	0	0	0	0	0	0	0	0
HUMAN INTERACTION		0	0	0	0	0	0	0	0	0	0	0
C	0	0	0	0	0	0	0	0	0	0	0	0
EQUIPMENT, MACHINES & MATERIALS UTILIZATION		0	0	0	0	0	0	0	0	0	0	0
Span/Control	0	0	0	0	0	0	0	0	1	0	0	0
		Time Span		Budget	0	Sub-Total	0	Responsibility Multiplier	1	TOTAL POINTS		0

	A	B
1	RESPONSIBILITY FACTOR	
2		
3	Span+Time+ Budget	Responsibility Factor
4	0	1.00000
5	1	1.02778
6	2	1.05555
7	3	1.08333
8	4	1.11110
9	5	1.13888
10	6	1.16665
11	7	1.19443
12	8	1.22220
13	9	1.24998
14	10	1.27775
15	11	1.30553
16	12	1.33330
17	13	1.36108
18	14	1.38885
19	15	1.41663
20	16	1.44440
21	17	1.47218
22	18	1.49995
23	19	1.52773
24	20	1.55550
25	21	1.58328
26	22	1.61105
27	23	1.63883
28	24	1.66660
29	25	1.69438

	A	B	C	D	E
1	PAY GRADE & EVALUATION POINTS RANGE				
2					
3	Min Points	Pay Grade			
4	100	1			
5	125	2			
6	150	3			
7	175	4			
8	200	5			
9	225	6			
10	250	7			
11	275	8			
12	300	9			
13	325	10			
14	350	11			
15	375	12			
16	400	13			
17	450	14			
18	500	15			
19	550	16			
20	600	17			
21	650	18			
22	700	19			
23	750	20			
24	800	21			
25	850	22			
26	900	23			
27	950	24			
28	1000	25			
29	1050	26			
30	1100	27			
31	1150	28			
32	1200	29			
33	1250	30			
34	1300	31			
35	1350	32			

County	Does OT start after 8 hours/10 hours/or 40 hours?	Does Paid Time off Vacation, etc. count towards OT?	Do the Employees receive call in pay?	Does the Department receive a shift differential?	When an employee is scheduled to work the holiday, what is the pay received?	Are Employees allowed to bank holidays as additional time off?	Comments
Waukesha	Dispatchers/Jailers get OT over 40 and outside normal schedule	Yes- whole County gets.	minimum of 2 and that counts toward their 40	No.	Earn holiday 1st year take them the 2nd. Get none 1st. Straight time but can take time off.	Yes. They have to schedule like vacation.	
Racine	after 40	no	minimum of 2 and that counts toward their 40	No.	time and 1/2 for working	Yes. They have to schedule like vacation.	
Kewasha	after 40- correction only	Yes	no	\$ .25 for 2nd \$ .35 for 3rd	no holiday pay	all are the same as regular days	Dispatchers are contracted out and do not work for County. They work for the City.
Fond Du Lac	Going to FLSA over 40	Going to FLSA - no	minimum of 1 and that counts toward their 40	\$ .20 for second shift \$ .25 for 3rd shift.	time and 1/2 for working plus holiday pay	Yes up to 48 hours They have to schedule like vacation.	Still under contract/ sworn and protected.
Winnebago	OT over 8 for Jailers Dispatchers get OT after 40	For Jailers/not Dispatchers	no	No.	Time and 1/2	Holiday pay is banked	Jailers Still Union Employees
Rock	Dispatchers anything after 40 or 8 hours	yes	no	2nd 1% 3rd 2%	Time and 1/2	Holiday pay is banked	Jailers Still Union Employees
Jefferson	Dispatchers/Jailer - outside of regular shift get OT	yes	no	2nd shift \$ .10 3rd shift \$ .20 Swing shift \$ .25	straight time	Holiday pay is banked has to be schedule like vacation. Can be paid out if not used	Jailers are Deputies
Outagamie	Dispatch after 40 Jailers fall under Garcia rule (171 hours in 28 day period).	yes	no	No.	Holiday pay plus time and 1 1/2	no	Still under Contract
Kewaunee	OT over 8 for Jailers/ Dispatchers	Yes	yes 2 hours	Yes	Time and 1/2	Yes schedule like vacation	Union Contract expires 2012 Patrol/Jailers/Dispatcher all same union and work all jobs

Sheyboygan	Jailers 160 hours in a 28 day period. Dispatchers over 40	no		yes 2 hours		\$ .30 for 2nd & 3rd	Holiday pay plus time and 1 1/2	no	Holiday pay works toward the 40 hours worked under FLSA
Calumet	Dispatch after 40 Jailers fall under Garcia rule (171 hours in 28 day period).	no		no		\$ .20 - \$ .30 Depending upon shift	Time and 1/2	They have PTO	
	After their scheduled 80 hours	no		no		no	8 hour holiday pay plus time and 1/2 for hours worked	no	Dispatchers are contracted out and do not work for County. They work for the city.
Chippewa	OT over 8.5 as per contract	yes		no		2nd - \$ .30 , 3rd - \$ .40	straight time	yes schedule like vacation	Union Contract expires 2012 Patrol/Jailers/Dispatcher all same union and work all jobs
Adams	after 40 - dispatch use 28 day rule for corrections (171Hours)	no		yes 2 hours		No.	double time plus 8 hours of vacation.	no	
Barron	Dispatch after 40 Jailers fall under Garcia rule (171 hours in 28 day period).	no		yes 2 hours		No.	time and 1/2		
Manitowoc	Corrections 171 hours in 28 days ** Telecommunicators 40 hour worked **	no		no		No.	time and 1/2 for holiday	no	** They also receive OT if they work more than 10 straight hours in one continuous shift
Marquette	after 42 hours worked	no		yes 2 hours		\$ .25/hour between 6pm - 6 am	time and 1/2 for holiday plus holiday pay		Their work week is 42 hours - 12 hour shifts 2 on 2 off 3 on 2 off, 2 on 3 off. Any hours worked in excess of the regularly scheduled work week.
Rusk	after 40	no		no		no.	1 1/2 time	no	
Vilas	40 hours	no		yes 2 hours		No.	1 1/2 time	no	

9a



Waupaca	beyond shift and 40 hours	no	no	No.	1 1/2 time	no		
Oconto	anything over normal shift (a 12 Hour shift)	yes		\$ .65/ hour between 6pm - 6am	**time and 1/2 for holiday plus holiday pay	**Yes. They have to schedule like vacation.	**they can either get paid or bank it.	
Pepin	after 160 hours worked in 28 days	no	n/a	\$ .30/hour	holiday pay plus time and 1 1/2			
Marathon	Dispatch after 40 Jailers fall under Garcia rule (171 hours in 28 day period).	no	yes 2 hours	2nd - \$ 60/month	Corrections 1 1/2 plus holiday	no		
Portage	Dispatch after 40 Jailers fall under Garcia rule (171 hours in 28 day period).	no	yes 2 hours		**straight time	** Corrections get Time 1/2 dispatch get comp time @ straight time as comp time.	Correction	
Shawano	Over 8 for dispatchers 8.25 for corrections	no	no	No.	time and 1/2	Banked - PTO		
Columbia	OT over 8 or 40	yes	yes 2 hours	2nd - \$.35 3rd - \$.40	Time and 1/2	yes. They have to schedule like vacation.		
Sawyer	OT outsided work schedule	yes	2 yes hours	\$ .45 6 pm - 6am	time and 1/2	They get paid out all holidays in a lump sum payment	Union until 12/31/2013	
Ozaukee	FLSA over 40	no	yes 2 hours	no	Holiday pay plus straight time	no	have sworn deputies in Jail	
Dodge	work 37.5/week OT over regular shift	yes	yes 2 hours	Relief \$.25 2nd - \$.20 3rd - \$.25	1 1/2 times for pay.	yes. They have to schedule like vacation.	Union staff until 12/31/12	

9a

Waushara	FLSA over 40	no	no	no	straight time	Yes they have to schedule like vacation.	
Dunn	Dispatchers over 40 Corrections over 86 hours in 14 day period. OT over 40	no	no	2nd - \$.40	straight time.	Yes they have to schedule like vacation.	
Washington	Corrections are on the Garcia rule	Vacation and Holiday do	yes 2 hours	no	Straight time.	Yes they have to schedule like vacation.	
Sauk	Dispatchers changing to OT after 40 on Jan 1	no	yes 2 hours	no	Time and 1/2	Can either bank or cash out.	Jailers are still sworn union
St. Croix	over 40	no	yes 2 hours	No.	holiday pay plus straight time	no	union contracts expire 2012

9a

## TELECOMMUNICATOR OVERTIME ANALYSIS

### A. COST OF OVERTIME AFTER 8 HOURS

Time Period: January 1, 2012 to July 7, 2012

Total hours worked outside normal 5/2 - 5/3 schedule 8,277.25

Total hours paid as overtime 5,909.00

Total hours outside of normal schedule paid as straight time 2,318.25

Annual cost to pay overtime after 8 hours:

$2,318.25 \times \$10.68 \text{ per hour} \times 2 \text{ cycles} =$

\$ 49,517.82

### B. COST OF PAY FOR INVERSING

Time Period: April 1, 2012 to July 7, 2012

Total hours worked outside normal 5/2 - 5/3 schedule 5,502.25

Total hours paid as overtime 3,839.25

Total hours outside 5/2 - 5/3 schedule worked as straight time 1,363.00

Percentage of inversed hours to total hours outside 5/2 - 5/3 schedule 25.73%

Cost of Inversing:

$25.73\% \times \$10.68 \text{ per hour} \times 1,363 \text{ hours} \times 4 \text{ quarters} =$

\$ 14,981.90

9a

A QUALITY  
EDUCATION  
FOR  
EVERY  
CHILD



## State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

October 10, 2005

Robert G. Bush  
420 S. Washington Street  
Green Bay, WI 54301-4217

Dear Mr. Bush:

This letter is in response to your letter to Michael Cross dated September 23, 2005, in which you ask questions about the application of the Wisconsin Statutes to a consolidated county library such as the Brown County Library.

To review your situation, a county is authorized to establish a consolidated county library. If a county decides to establish a consolidated county library, it must do so according to the terms of s. 43.57 Wis. Stats. Brown County has exercised this authority as indicated in the Brown County Code of Ordinances, Section 3.09, which states that a "County Library Board is hereby created in accordance with the Wisconsin Statutes, Section 43.57."

Since 1872, Wisconsin's public library laws have provided considerable autonomy to the library board in order to permit library collection and library operation decisions to be made in an environment insulated from political pressures. Reflecting this intent, once a county or municipality establishes a public library, s. 43.58 Wis. Stats. invests that library's board with a number of powers and duties. The statute grants to the library board "exclusive control of all moneys collected, donated or appropriated for the library fund" [s.43.58(1)], the duty to "audit and approve all vouchers for the expenditures of the public library" [s.43.58(2)], the authority to "supervise the administration of the public library" [s. 43.58(4)], the authority to "appoint a librarian" [s. 43.58(4)], and the authority to prescribe "the duties and compensation" for all library staff deemed necessary by the library board [s. 43.58(4)]. Public libraries in Wisconsin must operate in a manner consistent with these and other statutory provisions set out in ch. 43 of the Wisconsin Statutes.

The library board of a consolidated county library has the same powers and duties as a library board of a municipal library. This is made explicit by s. 43.57(4)(d), which provides that "boards appointed under pars. (a) and (b) have the powers and duties of a library board under s. 43.58." Paragraphs (a) and (b) refer to the library boards of consolidated county libraries and county library services.

A public library (whether it is a county, municipal, or joint public library) must be established and governed according to all of the relevant provisions of Chapter 43 to be a member of a library system, such as the Nicolet Federated Library System, of which the Brown County Library is a member. The Department of Public Instruction is responsible for the administration of Wisconsin's public library system aid program and must certify library system and member library statutory compliance before making state aid payments [s. 43.24(3)]. The statutory library system membership requirements for a municipal, county or joint public library are listed in s. 43.15(4)(c). In addition to those requirements, all counties (including counties that do not operate a public library) have system membership requirements as listed in s. 43.15(4)(b).

Wisconsin municipalities and counties have certain home rule powers that allow municipalities and counties to depart from state law under certain narrowly defined circumstances. Concerning home rule powers as they apply to Chapter 43, the Wisconsin Attorney General stated in 76 Op. Att'y Gen. 203 (1987) that "the operation and maintenance of public libraries, including municipal libraries, affects all the people of the state and they are a matter of statewide concern because of the extent to which libraries and municipalities rely on one another to furnish library services." The Attorney General concluded that municipal home rule provisions would not justify local departures for the provisions of Wisconsin Statutes Chapter 43. Similarly, on January 13, 2004, the Wisconsin Attorney General concluded in an unpublished opinion to the Calumet County Corporation Counsel that the statutes granting home rule to counties do not authorize counties to alter the terms of appointment to federated library system boards, as prescribed by Wis. Stat. s. 43.17(1).

A discussion of the specific issues you raise follows.

#### **1. Determination of the Library Table of Organization / Hiring & Firing Library Staff**

Wisconsin Statutes s. 43.58(4) provides:

Notwithstanding ss. 59.17 (2) (br) and 59.18 (2) (b), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

This statute explicitly provides the library board with legal authority to determine library staff positions, the duties of all library staff, and the compensation provided to all library staff. This same section also authorizes the librarian to "appoint such other assistants and employees as the library board deems necessary." The authority to hire and supervise staff encompasses the authority to fire or lay off staff.

In a November 21, 2003, letter, the Brown County Corporation Counsel asserted that s. 59.22(2) Wis. Stats. supercedes s. 43.58(4). Section 59.22(2)(c) provides that a county board may, for certain county departments and offices, establish the number of employees in the department or office, establish compensation, and establish regulations for employment. Based upon this section and s. 59.22(4), the Corporation Counsel concluded that the county board, rather than the library board, is authorized to establish the number of and compensation for library positions.

This assertion is contrary to Wisconsin's long established and carefully constructed statutory approach which provides for independent library board control of library operations. The Attorney General's office analyzed this issue in a letter to the Winding Rivers Library System dated December 27, 2000. That letter stated that "it is clear that in section 43.58(4), the Legislature intended that the Library Board—not the La Crosse County government—directly supervise the administration of the county library by appointing a librarian and prescribing his/her duties and compensation." In a footnote following this quote, the letter stated: "This conclusion finds further support in the fact that section 43.58(4) explicitly removes library boards and librarians from the purview of sections 59.17(2)(br) and 59.18(2)(b), which would otherwise authorize the county, through the county executive or administrator, to establish a 'department of libraries' and appoint the director of such department. By excluding library boards and librarians from sections 59.17(2)(br) and 59.18(2)(b), the Legislature specifically protected such boards from merely 'perform[ing] any advisory or policy-making function[s].' Sec. 59.17(2)(br), Wis. Stats."

The December 27, 2000, letter goes on to address s. 59.22(2) specifically. The letter states that an Attorney General opinion, 65 Op. Att'y Gen. 106 (1976) [related to the powers of a mental health board

Robert G. Bush  
Page 3  
October 10, 2005

operating under a statutory grant of authority similar to s. 43.58(4)], “supports the conclusion that section 43.58(4) expressly limits the powers of the county board under section 59.22(2).” The letter concludes that while the county board controls the total amounts made available to the Library Board by appropriation, “the Library Board nonetheless retains the discretion to spend the funds it receives from the La Crosse County government in the amounts and for the specific purposes it chooses without regard to line item amounts set forth in the appropriations.”

In addition, s. 59.22(2)(c) expressly provides that the county board has authority regarding certain county employees except as provided in s. 59.22(2)(d), which states:

The board or any board, commission, committee or agency to which the board or **statutes** [emphasis added] has delegated the authority to manage and control any institution or department of the county government may contract for the services of employees, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years.

As noted above, Wisconsin **Statutes** delegate the authority for management and control of a public library to the library board. Consequently, s. 59.22(2) does not supersede s. 43.58(4) which provides the library board with the legal authority to determine library staff positions, the duties of all library staff, and the compensation provided to all library staff.

## **2. Hiring the Library Director**

The library board has the sole legal authority to hire the library director, as provided by s. 43.58(4), discussed above.

## **3. Determining Compensation of the Library Director**

The library board has the sole legal authority to determine compensation for the library director, as provided by s. 43.58(4), discussed above.

## **4. Negotiating Labor Agreements**

Section 43.58(4), Wis. Stats. clearly invests the library board with the authority to prescribe the duties and compensation of library employees. Based on this language, this department has advised that the library board has the legal authority to participate in collective bargaining conducted on issues that determine library staff duties and compensation. A county’s unilateral exclusion of the library board from such collective bargaining would impair the library board’s explicit statutory authority to determine the duties and compensation of library employees.

## **5. Control of the Library Budget—Budget Transfers**

While the county board determines the annual appropriation provided to the library, the library board has exclusive control of how that funding is used to support library service. This is made explicit by s. 43.58(1), which provides in relevant part that “[t]he library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund ....” Because state statutes supersede conflicting county ordinances, Brown County Ordinance 3.14 does not limit library board decisions to transfer funds between budget lines.

Robert G. Bush  
Page 4  
October 10, 2005

## **6. Control of the Library Budget—Carryover of Unexpended Library Funds**

The library board's exclusive control of the expenditure of all moneys collected, donated, or appropriated for the library fund includes the authority of the library board to carry forward unexpended funds from one year to the next. We believe this represents good public policy by encouraging careful spending decisions and by removing incentives for wasteful spending that may be encouraged by a "spend it or lose it" policy.

## **7. Authority to Close Library Branches**

As noted above, the library director and library board have sole legal authority to lay off library staff (subject, of course, to the provisions of any employment contract or collective bargaining agreement). Also, as noted above, the library board has exclusive control of all library expenditures. In addition, s. 43.58(4) gives the library board the authority to "supervise the administration of the public library" and s. 43.58(1) gives the library board exclusive control of all library buildings. These statutory provisions give the library board the authority to determine library hours and library services, and the authority to lay off library staff and close a branch without county board approval.

Regarding all of the matters discussed above, it has been our experience that public officials will follow the law once they understand the relevant legal requirements and the consequences of noncompliance. In the event of noncompliance, the library system board may withhold grant payments, reduce or eliminate system services, or expel noncomplying libraries or counties from the library system [s. 43.18(2m)]. Before any formal board action is taken, however, the library system must receive approval for the action from the Division for Libraries, Technology, and Community Services of the Department of Public Instruction. A hearing is required before a public library system may expel a member library or county [s. 43.18(3)(d)]. Although not specifically required by statute, it is highly recommended that a hearing be held by the library system prior to a reduction of services to a member library. Expulsion of a member library will be approved by the Division only after a reduction of system services has failed to bring the library into compliance.

I hope this information is helpful. Please contact me if you have any questions.

Sincerely,

Sheila C. Ellefson  
Chief Legal Counsel

Copies to:

Michael Cross, Director, Public Library Development  
Richard Grobschmidt, Assistant State Superintendent, DPI  
Jeff Gilderson-Duwe, Director, Brown County Library  
Mark Merrifield, Director, Nicolet Federated Library System  
John C. Jacques, Brown County Corporation Counsel  
State Senator Robert Cowles  
State Senator Dave Hansen  
State Representative Judy Krawczyk  
State Representative Phil Montgomery



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

REC'D APR 07 2006

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April 6, 2006

Ms. Elizabeth Burmaster  
Superintendent  
Department of Public Instruction  
125 South Webster Street  
Madison, WI 53702

Dear Ms. Burmaster:

Deputy Superintendent Anthony S. Evers has requested a legal opinion concerning essentially the following question: In a county with a population of under 500,000 that has a county executive, do the library board and the library director as opposed to the county board and the county executive in a county with a consolidated county library operating under section 43.57 of the Wisconsin Statutes possess the authority to perform the following functions: hire and fire library staff; determine the compensation and duties of library staff; hire the library director; determine the compensation of the library director; conduct or participate in the negotiation of labor agreements with library staff; make budget transfers within the library budget; carry forward unexpended funds; and close library branches? Since Mr. Evers specified that his request was made pursuant to section 165.015(1), I construe the request as having been authorized by you.

In my opinion, the library board and the library director rather than the county board and the county executive possess the statutory authority to perform each of the listed functions.

Deputy Superintendent Evers also asks the following broad question: "Is it legally permissible for a public library board to delegate its legal authority under s. 43.58 Wis. Stats. to another organization or official, and, if so, under what circumstances would this be permissible?"

I interpret this question to be limited to organizations or officials that are not part of the library board and are not library staff, since the question apparently was prompted by the fact that some library boards have chosen not to negotiate labor agreements. The question itself, however, is not limited to the function of negotiating labor agreements.

18



Ms. Elizabeth Burmaster  
April 6, 2006  
Page 2

In my opinion, the library board has the authority to enter into contracts with outside entities for the performance of services that it deems necessary in order to perform its statutory functions and the library board may also by resolution delegate powers of a ministerial, administrative or executive nature involving the exercise of some discretion to the county board or to county officials, provided that the delegation is accompanied by ascertainable standards pursuant to which the delegated authority is to be exercised.

#### PRINCIPAL STATUTES INVOLVED

##### 1. Statutory Powers of Library Board and Library Director.

Section 43.001 provides:

Legislative findings and declaration of policy. (1) The legislature recognizes:

(a) The importance of free access to knowledge, information and diversity of ideas by all residents of this state;

(b) The critical role played by public, school, special and academic libraries in providing that access;

(c) The major educational, cultural and economic asset that is represented in the collective knowledge and information resources of the state's libraries;

(d) The importance of public libraries to the democratic process; and

(e) That the most effective use of library resources in this state can occur only through interlibrary cooperation among all types of libraries and the effective use of technology.

(2) The legislature declares that it is the policy of this state to provide laws for the development and improvement of public libraries, school libraries and interlibrary cooperation among all types of libraries.

Ms. Elizabeth Burmaster  
April 6, 2006  
Page 3

Section 43.17 provides in part:

Public library systems; general provisions. . . .

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(4) SYSTEM ADMINISTRATION. Notwithstanding ss. 59.17(2)(br) and 59.18(2)(b), responsibility for administration of a public library system shall vest in a head librarian who shall be appointed by and directly responsible to the public library system board.

Section 43.57(4)(d) provides that the library board in a county with a consolidated county library operating under section 43.57 "ha[s] the powers and duties of a library board under s. 43.58."

Section 43.58 provides in part:

(1) The library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund, and of the purchase of a site and the erection of the library building whenever authorized. The library board also shall have exclusive charge, control and custody of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes.

(2) The library board shall audit and approve all vouchers for the expenditures of the public library and forward the vouchers or schedules covering the same, setting forth the names of claimants, the amounts of each claim and the purpose for which expended, to the appropriate municipal or county financial officer or, in the case of a school district, the school district clerk, with a statement thereon, signed by the library board secretary or other designee of the library board, that the expenditure has been incurred and that the library board has audited and approved the bill. The municipal, county or school district governing body shall then pay the bill as others are paid.

\*\*\*

(4) Notwithstanding ss. 59.17(2)(br) and 59.18(2)(b), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

2. Statutory Powers of County Board and County Executive.

Section 59.17 provides in part:

(2) DUTIES AND POWERS. The county executive shall be the chief executive officer of the county. The county executive shall take care that every county ordinance and state or federal law is observed, enforced and administered within his or her county if the ordinance or law is subject to enforcement by the county executive or any person supervised by the county executive. The duties and powers of the county executive shall be, without limitation because of enumeration, to:

....

(br) In any county with a population of less than 500,000, appoint and supervise the heads of all county departments except those elected by the people and except where the statutes provide that the appointment shall be made by other elected officers. Notwithstanding any statutory provision that a board or commission or the county board or county board chairperson appoint a department head, except s. 17.21, the county executive shall appoint and supervise the department head. Notwithstanding any statutory provision that a board or commission supervise the administration of a department, the department head shall supervise the administration of the department and the board or commission shall perform any advisory or policy-making function authorized by statute.

Section 59.22(2) provides in part:

(c)1. Except as provided in subd. 2. and par. (d), the [county] board may do any of the following:

a. Provide, fix or change the salary or compensation of any office, board, commission, committee, position, employee or deputies to elective officers that is subject to sub. (1) without regard to the tenure of the incumbent.

b. Establish the number of employees in any department or office including deputies to elective officers.

c. Establish regulations of employment for any person paid from the county treasury.

Ms. Elizabeth Burmaster  
April 6, 2006  
Page 5

...

(d) The board or any board, commission, committee or agency to which the board or statutes has delegated the authority to manage and control any institution or department of the county government may contract for the services of employees, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years.

### ANALYSIS

#### 1. Question One: Statutory Authority To Perform Various Functions.

In 76 Op. Att'y Gen. 203, 204-05 (1987), the legislative declarations contained in section 43.001 were construed to mean that even the operation of local municipal libraries involves a matter of statewide concern:

The legislative findings and declaration of policy are tantamount to a statement that libraries, including local municipal libraries, are a matter of statewide concern because they are critical to the educational and the democratic processes.

This legislative statement and the provisions of chapter 43 reflect the fact that libraries have evolved from being a matter of local to being a matter of statewide concern. . . .

The Legislature in section 43.001 recognizes that each library cannot offer all the available services and publications that serve the educational and democratic processes. As a result, the Legislature declared that it is the state's policy to provide laws for the development and improvement of public libraries, school libraries and interlibrary cooperation among all types of libraries. Sec. 43.001(2), Stats. . . . The area from which a citizen can obtain library services and assistance has expanded beyond the local municipality to the limits of the interlibrary network, which can be statewide. See sec. 43.17(6), Stats. Under these circumstances, the operation and maintenance of public libraries, including municipal libraries, affects all the people of the state and they are a matter of statewide concern because of the extent to which libraries and municipalities rely on one another to furnish library services.

(Footnote omitted.)

Ms. Elizabeth Burmaster  
April 6, 2006  
Page 6

In 81 Op. Att'y Gen. 145 (1994), my predecessor concluded that a county could not transfer personnel authority over the social services director from the social services board to the personnel committee of the county board even in the absence of statutory language like that in section 43.001 that has been construed to mean that the operation of library systems is a matter of statewide concern. Furthermore, even prior to the enactment of section 43.001, 70 Op. Att'y Gen. 54, 58 (1981) specifically concluded that section 43.17 involves a matter of statewide concern.

As was the case in 81 Op. Att'y Gen. at 154, the organizational statutes at issue here involve the execution of a state function performed under extensive state supervision. In 81 Op. Att'y Gen. at 154, my predecessor also emphasized that the "detail and complexity of the statutes relating to the organization of social services and human services boards and departments are indicative of legislative intent to prescribe the precise organizational structure of the chain of command between the Department and county agencies." These same considerations also obtain here.

Consolidated and federated library systems perform a state function. Sec. 43.001, Wis. Stats. That function is performed under extensive state supervision on the part of the Wisconsin Department of Public Instruction ("DPI"). See secs. 43.03, 43.05 and 43.24, Wis. Stats. The precise organizational structure for performing that state function has been prescribed by the Legislature. See, e.g., secs. 43.17, 43.19, 43.21 and 43.58, Wis. Stats. In my opinion, the components of that organizational structure that are specified in those statutes therefore involve a matter of statewide concern.

The organizational structure of library systems is well-established. Under section 43.58(4), "the library board shall supervise the administration of the public library and shall appoint a librarian[.]" Under section 43.17(4), the head librarian has "responsibility for administration of . . . the public library system[.]" Section 43.58(4) provides that the librarian "shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation." Sections 43.17(4) and 43.58(4) explicitly remove library boards and librarians from the purview of sections 59.17(2)(br) and 59.18(2)(b), which would otherwise authorize a county to establish a library department and permit the county executive or county administrator to appoint the head of that department. By excluding library boards from sections 59.17(2)(br) and 59.18(2)(b), the Legislature also ensured that library boards retain their administrative functions over public libraries and that such boards are not limited to the "perform[ance] [of] . . . advisory or policy-making function[s]." See sec. 59.17(2)(br), Wis. Stats.

Sections 43.17(4) and 43.58(4) explicitly address four of the functions you describe. They state that the library board hires the library director, that the head librarian appoints such other assistants and employees as the library board deems necessary, that the head librarian

Ms. Elizabeth Burmaster  
April 6, 2006  
Page 7

prescribes the duties (including supervisory duties) of those employees and that the head librarian determines the compensation of those employees. Although these statutes do not explicitly state that the head librarian has the authority to fire library staff, section 17.10(6) provides that, in the absence of a civil service ordinance, appointive county officers may be removed at pleasure by the officer or body that appointed them. Similarly, in the absence of a civil service ordinance, of uniform regulations of employment under section 59.22(2)(c)1.c. or of contrary provisions in a labor agreement, the authority to remove appointive county employees is vested in the officer or body that appointed them. Since the library director appoints the staff of the library, the library director has the authority to fire library staff unless one of these other circumstances obtains.

In my opinion, the county board may not utilize the provisions of section 59.22(2)(c)1.a., 59.22(2)(c)1.b. or 59.22(2)(d) to hire the library director, hire the employees of the public library, determine the number of employees of the public library, determine the duties of those employees, or determine the compensation of those employees. In *Jones v. State*, 226 Wis. 2d 565, 604, 594 N.W.2d 738 (1999), the supreme court held: "It is well established that 'when we compare a general statute and a specific statute, the specific statute takes precedence.' *City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 185, 532 N.W.2d 690 (1995)." The provisions in sections 43.17(4) and 43.58(4) that refer to the library board and the library director are more specific than the provisions of section 59.22(2)(c)1.a., (c)1.b. and (d) that refer to the county board and to county employees in general. Compare 65 Op. Att'y Gen. 182, 184 (1976), which determined that the more specific provisions of sections 51.42 and 51.437 authorizing 51.42 and 51.437 boards to fix the salaries and establish the compensation of employees of those boards are controlling over the more general provisions of what is now section 59.22(2) that permit the county board to establish the salaries of county employees. The result is that sections 43.17(4) and 43.58(4) "plac[e] . . . specific direct . . . control in the . . . [library] board while at the same time placing general budgetary control . . . in the county board." 65 Op. Att'y Gen. 105, 107 (1976).

The authority of the library board and the library director to conduct or participate in labor negotiations is specifically granted by section 59.22(2)(d), which vests the "board . . . to which . . . statutes has delegated the authority to manage and control any institution . . . of the county government" with the authority to "contract for the services of employees, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years." Such authority is also necessarily implied from the provisions of section 43.58(4), which authorizes the library director to determine the compensation and establish the duties of library staff under the general supervision of the library board. The library board possesses those powers that are fairly implied from those powers expressly conferred upon it by statute. See 77 Op. Att'y Gen. 193, 194 (1988). The library board cannot enter into labor contracts, determine employee compensation or establish the duties of library employees in any meaningful fashion unless it has the implied

Ms. Elizabeth Burmaster  
April 6, 2006  
Page 8

power to conduct or participate in the negotiations that result in labor contracts involving library employees.

The authority of the library board to make budget transfers within the library budget and to carry forward unexpended funds is expressly granted under section 43.58(1), which provides that "[t]he library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund . . ." and is necessarily implied from the provisions of section 43.58(4), which grants the library board the authority to "supervise the administration of the public library[.]" In 65 Op. Att'y Gen. at 184, it was noted that the term "library fund" appears only in sections 43.52(1) and 43.58(1). 65 Op. Att'y Gen. at 184 described the "library fund" as consisting largely of "the proceeds of a tax levied and moneys appropriated . . . to be used exclusively to maintain 'the public library.'" In 77 Op. Att'y Gen. at 194, the library board's authority over the library fund under section 43.58(1) was described as follows:

Based on the common and generally understood meaning of the above language of section 43.58(1), it is my opinion that the legislative grant to a library board of "exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund" contemplates that the board will exercise complete control over the *manner* in which such moneys are expended . . . .

(Italics in original). 65 Op. Att'y Gen. at 184 similarly concluded that "[e]xpenditures therefrom [the library fund] can only be made by a library board."

DPI, which exercises supervisory authority over library boards, has consistently construed 77 Op. Att'y Gen. 193 and 65 Op. Att'y Gen. 182 to mean that, once funds are appropriated to the library board, the library board is the only entity that can exert direct control over the expenditure of those funds. 77 Op. Att'y Gen. 193 and 65 Op. Att'y Gen. 182 also "ha[ve] considerable weight if the legislature later amends and revises a statute but makes no changes in response to the opinion[s]." *State ex rel. North v. Goetz*, 116 Wis. 2d 239, 244-45, 342 N.W.2d 747 (Ct. App. 1983). Furthermore, "in cases where an attorney general's opinion[s] ha[ve] been followed by consistent administrative practices, those opinions may well become authoritative as a practical construction of a statute." *In re Petition of Kruzell*, 67 Wis. 2d 138, 146-47, 226 N.W.2d 458 (1975).

Wisconsin Statutes Annotated §§ 41.01 to 47.01 (West 2003), at 84 indicates that section 43.58 has been amended numerous times since 77 Op. Att'y Gen. 193 and 65 Op. Att'y Gen. 182 were issued. To cite just one example, 1995 Wisconsin Act 201, secs. 54 and 55, explicitly reaffirmed that the library board and the library director are not subject to the provisions of sections 59.17(2)(br) and 59.18(2)(b). It is my opinion, based upon 77 Op. Att'y Gen. 193 and 65 Op. Att'y Gen. 182, the consistent construction of those opinions by DPI and the numerous amendments to section 43.58 since those opinions were issued, that the

Ms. Elizabeth Burnmaster  
April 6, 2006  
Page 9

library board is the only entity that has the authority to make budget transfers within the library budget and to carry forward unexpended funds, including those that have been appropriated to the library board by a local unit of government such as a county.

The authority of the library board to set the salary of the library director and to close library branches is either expressly granted or necessarily implied from the provisions of section 43.58(1), which grants the library board exclusive control over all expenditures from the library fund, together with the provisions of section 43.58(4), which grants the library board the authority to "supervise the administration of the public library.[]" The library board is the entity that exercises direct supervision over the administration of the public library. The library board cannot exercise its authority to supervise the administration of the public library under section 43.58(4) unless it can determine whether to close library branches. The library board also cannot exercise direct supervision over the administration of the public library without setting the salary of the library director who, in turn, sets the salaries of library staff. Both the function of setting the salary of the library director and the function of closing library branches also directly implicate the ability of the library board to control expenditures from the library fund under the rationale of 77 Op. Att'y Gen. 193 and 65 Op. Att'y Gen. 182. If the library board lacked the authority to close library branches, it might be required to make unwanted expenditures from the library fund. Because of the direct control it exercises over expenditures from the library fund, the library board also may determine the extent to which expenditures from that fund should be allocated toward the salary of the library director.

In response to your first question, I therefore conclude that the library board and the library director as opposed to the county board and the county executive possess the authority to hire and fire library staff; determine the compensation and duties of library staff; hire the library director; determine the compensation of the library director; conduct or participate in the negotiation of labor agreements with library staff; make budget transfers within the library budget; carry forward unexpended funds; and close library branches.

## 2. Question Two: Performance Of Library Board/Director Functions By Other Entities.

77 Op. Att'y Gen. at 194 determined that, under the language contained in section 43.58(1), "the legislative grant to a library board of 'exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund' . . . includes the authority to contract the expenditure of such funds to procure necessary goods and services for the public library." Under the reasoning of that opinion, the library board has the authority to enter into contracts with outside entities for the performance of services that it deems necessary in order to perform its statutory functions. If the library board enters into a contract with an outside entity, the provision of services by that outside entity is governed by the express terms of the contract between the library board and the outside entity.



Ms. Elizabeth Burmaster

April 6, 2006

Page 10

With respect to the delegation of certain library board or library director functions to the county board or to county officials, 74 Op. Att'y Gen. 227, 230 (1985) determined that a county board could utilize the provisions of what is now section 59.13(1) to delegate by resolution certain kinds of authority to committees of the county board:

Municipal powers of a ministerial, administrative or executive nature may be delegated to a committee, even if the delegation permits the exercise of some discretion or judgment. *See First Savings & Trust Co. v. Milwaukee County*, 158 Wis. 207, 227-28, 148 N.W. 22 (1914); *Kavanaugh v. Wausau*, 120 Wis. 611, 615-16, 98 N.W. 550 (1904); *Duluth, South Shore & Atlantic R. Co. v. Douglas County*, 103 Wis. 75, 79, 79 N.W. 34 (1889); *French v. Dunn County*, 58 Wis. 402, 406, 17 N.W. 1 (1883).

*See also* 68 Op. Att'y Gen. 133, 137 (1979): "A county board may delegate powers which are purely ministerial and executive to a committee or to an officer." *Duluth, South Shore & Atlantic R. Co. v. Douglas County*, 103 Wis. 75, 79 N.W. 34 (1899).

Unlike the fact situation discussed in 74 Op. Att'y Gen. 227, the library board does not have express statutory authority to delegate functions to the county board or county officials. However, under the rationale of 77 Op. Att'y Gen. at 194 it is my opinion that the provisions of section 43.58(1) granting the library board the authority to control expenditures from the library fund and the provisions of section 43.58(4) granting the library board the authority to supervise the administration of the public library provide the library board with the implied power to delegate by resolution powers of a ministerial, administrative or executive nature to the county board or to county officials.

74 Op. Att'y Gen. at 231 also emphasized that "[a]ny delegation of authority must be accompanied by ascertainable standards pursuant to which that authority is to be exercised. *See Smith v. Brookfield*, 272 Wis. [1] at 10, [74 N.W.2d 770 (1956)]; compare *French*, 58 Wis. at 405-06." Unlike the fact situation discussed in 74 Op. Att'y Gen. 227, your inquiry does not involve delegation to a subordinate entity such as a committee of the library board or library staff. A delegation to the county board, for example, would essentially constitute a delegation to a superior entity insofar as general budgetary control is concerned. *See* 65 Op. Att'y Gen. at 184. Despite this difference, it is my opinion that delegation of certain functions involving the exercise of some discretion or judgment to the county board or to county officials is permissible provided that the delegation is accompanied by ascertainable standards pursuant to which the delegated authority is to be exercised.

Ms. Elizabeth Burmaster  
April 6, 2006  
Page 11

I therefore conclude that the library board may by resolution delegate powers of a ministerial, administrative or executive nature involving the exercise of some discretion to the county board or to county officials, provided that the delegation is accompanied by ascertainable standards pursuant to which the delegated authority is to be exercised.

Sincerely,



F. Thomas Creeron III  
Assistant Attorney General

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## Vacation Accrual Comparison

*Distributed to February  
Board Nov. 17, 2011*

	Represented Staff – 2011	Administrative Staff – 2011	Current Staff – 2012	New Staff – 2012
after 30 days	5 days			
after 6 months		10 days		
after 1 year	11 days	11 days	11 days	5 days
after 2 years				
after 3 years	12 days	12 days	12 days	10 days
after 4 years	13 days	13 days		
after 5 years		15 days		
after 6 years	14 days		14 days	
after 7 years	15 days			
after 8 years				
after 9 years	16 days	18 days	16 days	
after 10 years		20 days		15 days
after 11 years	17 days			
after 12 years			18 days	
after 13 years	18 days			
after 14 years				
after 15 years	19 days		20 days	
after 16 years	20 days	25 days		
after 17 years	21 days			20 days
after 18 years	22 days			
after 19 years	23 days			
after 20 years	24 days			
after 21 years	25 days			

### Leave Summaries:

Current Staff	Vacation Time	Casual Leave	Personal Leave	Total Leave
after 6 months	-	5 days	4 days	9 days
after 1 year	11 days	5 days	4 days	20 days
after 3 years	12 days	5 days	4 days	21 days
after 6 years	14 days	5 days	4 days	23 days
after 9 years	16 days	5 days	4 days	25 days
after 12 years	18 days	5 days	4 days	27 days
after 15 years	20 days	5 days	4 days	29 days
<b>New Staff</b>	<b>Vacation Time</b>	<b>Casual Leave</b>	<b>Personal Leave</b>	<b>Total Leave</b>
after 30 days	-	-	4 days	4 days
after 6 months	-	5 days	4 days	9 days
after 1 year	5 days	5 days	4 days	14 days
after 3 years	10 days	5 days	4 days	19 days
after 10 years	15 days	5 days	4 days	24 days
after 17 years	20 days	5 days	4 days	29 days